3622.

SUPREME COURT OF THE UNITED STATES.

No. 198.

UNITED STATES, APPELLANTS,

vs.

WM. AND ALEX. MACCULLAGH AND JAMES CORNAHAN, TRUSTEES OF ALEXANDER MACCULLAGH AND DAVID McCALEB.

ON APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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[GIDEON, Print.]

Circuit court of the United States, fifth circuit, eastern district of Louisiana.

WILILAM MCCULLAGH et als.
vs.
THE UNITED STATES. } No. 1,619.

Pleas and proceedings before the honorable circuit court of the United States, for the fifth circuit and eastern district of Louisiana, being the December term, A. D. 1849, of the said court, held at the city of New Orleans, in the district aforesaid, on the 22d day of February, A. D. 1850.

Be it remembered, that heretofore, to wit, on the seventeenth day of June, A. D. eighteen hundred and forty-seven, came the plaintiffs, by their solicitor, L. Janin, and filed in the clerk's office of said court a transcript of a record from the district court of the United States, for the district court of Louisiana; which transcript is in words and figures following, to wit:

Transcript from the United States district court, for the district of Louisiana, filed June 17th, A. D. 1847, in the clerk's office of the United States circuit court, in and for said said *district.*

United States district court, for the district of Louisiana.

Be it remembered, that on the sixteenth day of June, anno domini 1846, William MacCullagh, Alexander MacCullagh, James Cornahan, by their counsel, L. Janin, esq., came into the said court, and filed the following petition, to wit:

To the honorable district court of the United States, for the district of Louisiana.

The petition of William MacCullagh, Alexander MacCullagh, and James Cornahan, trustees of the heirs of Alexander MacCullagh, residing in the kingdom of Great Britain, and of David McCaleb, a citizen of the State of Mississippi:

Respectfully shows, that Alexander MacCullagh, senior, was, during a considerable number of years, and up to the time when the British province of Florida was conquered by Spain, the provost marshal of said province; that when, in the year 1781, the British troops surrendered the said province to the Spanish authorities, the said Alexander MacCullagh remained at Pensacola, intending to become a Spanish subject; that, during his residence in said province, while under the British Government, the said Alexander MacCullagh had acquired, partly by direct grants from the crown, and partly by purchase, various tracts of land within the limits of said province, as then constituted; that inasmuch as said lands constituted his only property, and he had

invested in them nearly all his means, he remained in said province to make the best use of them in his power, and that he died in Pensacola about the month of August, 1781, before he had time to take any measures concerning said lands. The petitioners show, that Alexander MacCullagh left no other heirs-at-law than Alexander MacCullagh, then a minor under age, his nephew.

That in the year 1789, the said Alexander MacCullagh, junior, came to the United Stetes, and became a citizen thereof, and remained in the same until the time of his death, in the year 1821.

That by deeds executed in the year 1804 and 1813, the said Alexander MacCullagh, jr., conveyed one undivided half of said lands to your petitioner, David McCaleb; that most of the said lands lie within the boundaries of the State of Louisiana; that as soon as practicable after the creation of boards of commissioners appointed to examine and report on claims to lands lying in those parts of the State of Louisiana, which were formerly a part of the British province of West Florida, Samuel MacCullagh and David McCaleb submitted to them their claims to the aforesaid tracts of land; that the commissioners of the St. Helena land district made a favorable report on them, and recommended them for confirmation; but that Congress never acted on said report, so far as it related to said claims.

The petitioners show, that aftert he death of Alexander Macullagh, jr., in the year 1821, his estate, and particularly the aforesaid lands, were inherited by his brother Samuel Macullagh; that said Samuel Macullagh thereupon came from Great Britain to the United States to attend principally to the settlement of these land claims, and that he died in Claiborne county, Mississippi, on the 3d day of October, 1825, leaving a will, by which he bequeathed his undivided half in the aforesaid lands, in equal shares, to his widow, Margaret Macullagh, and to his children, Isabella Macallagh, the wife of Samuel Scott, Ann Macullagh, William Macullagh, Mary Macullagh, the wife of John Curphey, John Macullagh, Alexander Macullagh, Margaret Macullagh, the wife of James Wallace, Sarah Macullagh, and Elizabeth Macullagh; and that by a deed of trust executed on the 3d of March, 1845, the said widow and heirs conveyed their interest in said lands to your petitioners, William Macullagh, Alexander Macullagh, and James Cornohan, in trusts for themselves and their heirs.

Your petitioners show that all the aforesaid lands having been granted by the British government, by regular letters patent, they were the lawfully property of said Alexander Macullagh, senior, all whose rights are now vested in the petitioners; that they and the said Samuel Macullagh, in his lifetime, frequently applied for the confirmation thereof to Congress, but could never obtain a final action on the same, but that, by an act of Congress of June 17, 1844, they have been authorized to submit their claims to this honorable court for inquiry and final adjudication.

The petitioners show that among the aforesaid tracts of land is one containing one thousand acres, granted to Alexander Macullagh, senior,

by the crown of Great Britain, under date of February 4th, 1772; that the letters patent were issued direct to the said Alexander Macullagh for one thousand acres of land, situated "on the Mississippi river, to the westward of Baton Rouge."

Wherefore, the petitioners pray, that the United States of America, through the district attorney, for the district of Louisiana, be cited, and that after due proceedings, the title of the petitioners to the above described tract of land be declared good, and valid, and confirmed; and the petitioners further pray, that after said decision, the surveyor general of the United States, for the State of Louisiana, be directed to survey said land, and make a report of his survey, showing particular whether any, and if so, what portion of said land has been sold or otherwise deposed of by the United States; and the petitioners further pray, that they may be permitted to enter in any land office in the State of Louisiana, a quantity of land equal to that which, from the aforesaid report of the surveyor general, may appear to have been sold or otherwise disposed of by the United States.

L. JANIN,
Of counsel.

And on the 16th day of June, anno domini eighteen hundred and forty-six, the following citation was issued from the clerk's office, to wit:

Citation.

United States district court, sitting in and for the district of Louisiana, to the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summons S. W. Downs, United States attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district of Louisiana, at a district court to be holden at New Orleans, on the first Monday of July, 1846, then and there to answer a petition in chancery, filed against the United States, wherein Macullagh et als. are petitioners; herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable T. H. McCaleb, judge, this 16th day of June, New Orleans, 1846, and 70th year of American independence.

L. E. SIMONDS,
D'y Clerk.

Mem.—The defendant is to enter appearance in the above cause in the clerk's office, on or before the first Monday of July, 1846, otherwise the petition may be taken pro confesso.

Marshal's return.

Received this 16th day of June, 1846, and on the same day of , 184 , served copies of the within citation, plaintiffs' petition and documents annexed, on the within named S. W. Downs, esq., United

States attorney, in the manner following, to wit, by leaving the same in his office in New Orleans, in the hands of Alfred Penllist, a white person over 14 years of age, and employed in said office, said attorney being absent at the time.

Returned 17th June, 1846.

For WM. F. WAGNER,
U. S. marshal,
J. H. RINEHART,
D'y U. S. marshal.

And on the second day of November, anno domini eighteen hundred and forty-six, Thomas J. Durant, esq., attorney for the United States, came into the said court and filed the following answer, to wit:

McCULLAGH et al.
vs.
THE UNITED STATES. } No. 102.

In the district court of the United States, for the district of Louisiana.

The answer of the United States, defendants, to the petition of McCullagh et al., respectfully shows, that they deny all and singular the facts and allegations in plaintiffs' petition contained.

Wherefore they pray that said petition may be dismissed at plaintiffs' costs.

(Signed) THOS. J. DURANT,
Attorney U. S.

And on the ninth day of April, anno domini eighteen hundred and forty-seven, the following order was entered on the minutes, to wit:

McCULLAGH et als.
vs.
THE UNITED STATES. } No. 102.

Friday, April 9th, 1847.

Present, honorable T. H. McCaleb.

Upon motion of Louis Janin, of counsel for plaintiffs in the above entitled cause, it having been suggested to him by the honorable judge of the district court of the United States, for the district of Louisiana, that he, the said judge, is interested in the said cause, and therefore would recuse himself upon sitting on the trial thereof; it is therefore ordered, by virtue of the act of Congress of the 3d March, 1821, that an authenticated copy of said record be certified to the circuit court.

United States district court, for the district of Louisiana.

I, Needler R. Jennings, clerk of the court aforesaid, do hereby certify that the foregoing is a true transcript of the record in the suit of McCullogh et al. vs. United States, No. 102, on the docket of the said court.

In testimony whereof I have hereunto signed my name and affixed the [SEAL.] seal of the said court, at New Orleans, this 17th day of June, A. D. 1847.

N. R. JENNINGS, *Clerk.*

Agreement filed (in district court,) April 5, 1847.

N. R. JENNINGS, *Clerk.*

And transferred to, and filed in circuit court, June 17th, 1847, as follows:

McCULLAGH et al.
vs.
The UNITED STATES. } 102.

In this case it is agreed, that the validity of *of* the grant under which the plaintiffs claim, shall alone be submitted to the court for investigation and decision; and the question whether the present plaintiffs are the owners of said grant by inheritance and mesne conveyances, as also the question when and how the land is to be surveyed, are for the present reserved, and are to be submitted for the decision of the court only in case of judgment on the title in favor of the plaintiffs.

New Orleans, April 5, 1847.

THOMAS J. DURANT,
Atl'y U. S. for La.
L. JANIN,
Attorney for plaintiffs.

United States circuit court, fifth circuit, and eastern district of Louisiana.

On the 22d day of February, 1850, the following entry was made of record on the minutes:

WILLIAM McCULLAGH et al.
vs.
The UNITED STATES. } No. 1619.

This cause was this day, by consent of parties, taken up for hearing before his honor J. McKinley, presiding judge, on the transcript of the record from the United States district court, Miles Taylor, esq., appearing for the plaintiffs, and Logan Hunton, esq., United States district attorney, for the defendants. After argument of consul, the cause was submitted and taken under advisement.

Grant.

The following copy is received in evidence with the same force and effect as the original.

L. HUNTON, *U. S. attorney.*

British Government to Alexander Maccullagh, 4th Feb'y, 1772. Letters patent for 1000 acres on the Mississippi.

WEST FLORIDA, *ss.*

George the Third, by the grace of God, "of Great Britain, France, and Ireland, King, defender of the faith, and so forth, to all to whom these presents shall come, greeting:

Know ye, that we, of our special grace, certain knowledge, and mere motion, have given and granted, and by these presents for us, our heirs, and successors, do give and grant, unto Alexander Maccullagh, gentleman, his heirs and assigns, all that tract of land situate on the Mississippi, to the westward of Baton Rouge, in our province of West Florida, and having such shape, form, and marks, both natural and artificial, as are represented on the plat thereof, hereunto annexed, as drawn by our surveyor general of lands, which said tract of land contains one thousand acres, and is bounded, as by the further certificate hereunto likewise annexed, under the hand of our said surveyor general of lands, in our said province, may more fully and at large appear; together with all woods, under woods, timber and timber trees, lakes, ponds, fishing waters, water courses, profits, commodities, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining; together also with the privilege of hunting, hawking, and fowling in and upon the same, and all mines and minerals, reserving to us, our heirs, and successors, all mines of gold and silver; to have and to hold the said tract of land, and all and singular the premises hereby granted, with the appurtenances, unto the said Alexander Maccullagh, his heirs and assigns forever, in fee and common socage, yielding and paying unto us, our heirs and successors, or to the receiver general of our quit rents for the time being, or to such other officer as shall be appointed to receive the same, a quit rent of one-half penny sterling per acre, at the feast of St. Michael every year; the first payment to commence on the said feast of St. Michael which shall first happen after the expiration of two years from the date hereof, or within fourteen days after the said feast annually; provided, always, and this grant is upon condition, nevertheless, that the said Alexander Maccullogh, his heirs and assigns, shall and do, within three years after the date hereof, for every fifty acres of plantable land hereby granted, clear and cultivate three acres at least, on that part thereof which he or they shall judge most convenient and advantageous, or else do clear and drain three acres of swampy or sunken ground, or do drain three acres of marsh, if any such shall be contained therein; and shall further, within the time aforesaid, put and keep upon every fifty acres thereof accounted barren, three neat cattle, and continue the same thereon until three acres for every fifty acres be fully cleared and improved; and if it should so happen that there be no part of the said tract of land fit for present cultivation without manuring and improving the same, if the said Alexander Maccullagh, his heirs or assigns, shall within three years from [the] date hereof erect on some part of the said tract of land one good dwelling

house, to contain at least twenty feet in length and sixteen feet in breadth, and put on his said land the like number of neat cattle aforesaid on every fifty acres therein contained; or otherwise, if any part of the said tract of land shall be stony or rocky ground, not fit for culture or pasture, shall and do, within three years aforesaid, besides erecting the said house, begin to employ thereon, and continue to work for three years then next ensuing, in digging any stone quarry, or work one good and able hand for every hundred acres thereof, it shall be accounted a sufficient cultivation and improvement: Provided, also, that every three acres which shall be cleared and worked, or cleared and drained as aforesaid, shall further be accounted a sufficient seating, planting, cultivation, and improvement, to save forever from forfeiture fifty acres of land in any part of the tract hereby granted; and the said Alexander Maccullagh, his heirs and assigns, be at liberty to withdraw his or their stock, or to forbear working in any quarry or mine, in proportion to such cultivation and improvement aforesaid *aforesaid* as shall be made upon the plantable lands, swampy sunken ground, or marshes therein contained: Provided, also, that this grant shall be duly registered in the register's office of this province within six months from the date hereof; and also that a docket thereof shall be entered in the auditor's office within the same time that such establishment shall take place in this province: Provided, always, that the said Alexander Maccullagh, his heirs and assigns, at any time hereafter, having seated, planted, cultivated, and improved the said land, or any part therof, according to the directions and conditions above mentioned, may make proof of such seating, planting, cultivation, and improvement in the general court of the county, district, or precinct where the said land lieth, and have such proof certified to the register's office, and there entered with the record of this grant, a copy of which duly attested shall be admitted on trial to prove the seating and planting of said lands: Provided, always, nevertheless, that if the said Alexander Maccullagh, his heirs and assigns, do not in all things fully comply with and fulfil the respective directions and conditions herein above set forth for the proper cultivation of said land, within the time herein above limited for the completion thereof; or if the said Alexander Maccullogh, his heirs or assign, shall not pay to us, our heirs and successors, or to the receiver general of our quit rents, or to the proper officer appointed to receive the same, the said quit rent of one-half penny sterling per acre, on the said feast of St. Michael, or within fourteen days after, annually, for every acre contained in this grant, that then, and in either of the cases respectively, this grant shall be void, any thing herein contained to the contrary notwithstanding; and the said lands, tenements, hereditaments, and premises hereby specified, and every part and parcel thereof, shall revert to us, our heirs and successors, fully and absolutely, as if the same had not been granted. Given under the great seal of our province of West Florida; witness our trusty and well beloved Peter Chester, esquire, captain general, governor, and commander-in-chief in and over our said province at Pensacola, this fourth day of February, in the year of our

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Lord one thousand and seven hundred and seventy-two, and in the twelfth year of our reign.

Passed the secretary's office.

PHIL. LIVINGSTON, *D. Sec'y.*

Pensacola, 4th February, 1772.

I do hereby certify, that the within letters patent, surveyor general's certificate, and the certificate of the attorney general, are recorded in the secretary and register's office of the province of West Florida, in Lib. A, No. 1, page 63.

Examined and compared with the said record, by—

PH. LIVINGSTON, JR., *D. Secretary.*

Pursuant to a fiat from his excellency, Peter Chester, esquire, captain general, and governor-in-chief in and over his Majesty's [province] of West Florida, and to me directed, bearing date this fourth day of February, 1772, I have perused and inspected the within letters patent, and do hereby certify that there is no error therein apparent to me.

E. R. WEGG, *Att'y general.*

Thomas Webb, register of the land office at Greensburg, La., certifies that the above and foregoing is a true copy from the records of this office, book C, No. 1, pages 24 to 31. Given under my hand, 29th day of July, A. D. 1850.

TH. WEBB, *Register.*

Certificate of survey and plat.

WEST FLORIDA, *ss.*

Pursuant to a warrant from his excellency, Peter Chester, esquire, captain general, governor, and commander-in-chief in and over his Majesty's said province, to me directed, bearing date the twentieth day of January, anno domini 1772, I have caused to be surveyed and measured out unto Alexander Maccullagh a plantation or tract of land, containing one thousand acres, situated on the river Mississippi, to the westward of Baton Rouge, which tract had formerly been advised to be granted to Richard Nicholas, but since relinquished by him. The said tract, being low land, is unfit for the cultivation of hemp or flax, and hath no point proper for erecting fortifications, public wharfs, naval yards, or for other military purposes; and hath such form and marks, both natural and artificial, as is fully represented in the plat annexed. Certified this first day of February, anno domini 1772.

By ELIAS DURNFORD,
Surveyor General.

(See plat, next page.)

(For plat see original, page 13.)

to the laws, usages, and customs of the Government under which the same originated, had not the sovereignty of the country been divested; this court, acting under and by virtue of the act of Congress of the 26th of May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," and also an act approved on the 17th day of June, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the 31st degree of north latitude, and between *and between* the Mississippi and Perdido rivers," doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the said grant to the said Alexander MacCullagh was a good and valid grant, and that the petitioners, or those holding under him by inheritance or by mesne conveyances, have good title against the United States, the defendants, in and to the lands claimed in the petition and granted as aforesaid to the said Alexander MacCullagh, to wit, one thousand acres of land, situated on the river Mississippi, to the westward of Baton Rouge, as described and represented in the survey aforesaid, under the authority of the British Government. It is further ordered, adjudged, and decreed, that in case said land, so claimed by the petitioners in their petition, or any part or portion thereof, shall have been sold by the United States, or otherwise disposed of, the said petitioners, or those holding under the said Alexander MacCullagh, shall be, and are hereby, authorized to enter in any land office in the State of Louisiana, in parcels conformably to sectional divisions and subdivisions, a like quantity of public lands, after the same shall have been offered at public sale.

Judgment rendered 26th February, 1850.

Judgment signed 27th February, 1850.

J. McKINLEY,
Per J. W. GURLEY, *Clerk*.

Rule.

On the 25th January, 1850, the court adopted the following rule, and which was entered of record on the minutes of that date:

Whereas the hon. John McKinley, presiding judge of this court, is, in consequence of an infirmity resulting from disease, unable to sign his name, it is ordered, that all judgments and decrees rendered in appeal causes be signed by the clerk of this court in the name of said judge.

On the 26th of February, A. D. 1850, after the rendition of the final judgment (above set forth and copied at large) the following order was made and entered on the minutes:

WM. MACCULLAGH et als.
vs.
THE UNITED STATES. } No. 1619.

On motion of Logan Hunton, esq., United States district attorney, and on representing to the court that the defendants herein feel aggriev-

LAND OFFICE, *Greensburgh, La.*

Thomas Webb, register of the land office, Greensburgh, Louisiana, certifies that the within and foregoing is a true copy from the records of this office, book C, No. 1, pages 32 and 33.

In faith whereof I have hereunto signed my name officially, this 29th day of July, A. D. 1850.

THS. WEBB, *Register.*

Judgment.

And afterwards, to wit, on the 26th day of February, A. D. 1850, a final judgment was rendered and entered of record in the minutes and judgment docket, as follows:

WM. MCCULLAGH et als.
vs.
THE UNITED STATES. } No. 1619.

This cause came on to be heard upon the petition and answer, and the evidence adduced by the parties, so far as the validity of the grant under which the plaintiffs claim, (the question whether the present plaintiffs are the owners of said grant by inheritance and mesne conveyances having been reserved by agreement of counsel, and to be submitted for the decision of the court only in case of judgment in favor of the plaintiffs establishing and deciding the validity of the grant.) And after argument of counsel before his honor, J. McKinley, presiding judge of this court sitting alone, was submitted to the court, and the court having maturely considered the same, and being satisfied from the evidence that Peter Chester, esquire, captain general and governor-in-chief in and over the province of West Florida, and under the British Government, having full power and authority so to do, did, on the fourth of February, seventeen hundred and seventy-two, grant to Alexander Maccullagh, then a resident of the British province of West Florida, one thousand acres of land, situated on the river Mississippi, to the westward of Baton Rouge; that the land so granted was surveyed and set apart to the grantee, the said Maccullagh, by the competent surveying officer of the said province, on the first day of February, in the year 1772; and that letters patent by the crown of Great Britain, under the great seal of the said province, were issued to the said Alexander MacCullagh on fourth February, A. D. 1772, which were perused and inspected by the attorney general, and was, together with the surveyor general's certificate and the attorney general's certificate, recorded in the secretary and register's office of the said province, and a docket thereof entered in the auditor's office of the said province; and being further satisfied that the said grant was a good and valid grant from the British Government to the said Alexander MacCullagh, and the same was protected by the treaty made between Great Britain and Spain on the day of , in the year 1783, as well as by the laws of nations and the Constitution and laws of the United States; and that the same would have been a complete title under and in conformity

to the laws, usages, and customs of the Government under which the same originated, had not the sovereignty of the country been divested; this court, acting under and by virtue of the act of Congress of the 26th of May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," and also an act approved on the 17th day of June, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the 31st degree of north latitude, and between *and between* the Mississippi and Perdido rivers," doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the said grant to the said Alexander MacCullagh was a good and valid grant, and that the petitioners, or those holding under him by inheritance or by mesne conveyances, have good title against the United States, the defendants, in and to the lands claimed in the petition and granted as aforesaid to the said Alexander MacCullagh, to wit, one thousand acres of land, situated on the river Mississippi, to the westward of Baton Rouge, as described and represented in the survey aforesaid, under the authority of the British Government. It is further ordered, adjudged, and decreed, that in case said land, so claimed by the petitioners in their petition, or any part or portion thereof, shall have been sold by the United States, or otherwise disposed of, the said petitioners, or those holding under the said Alexander MacCullagh, shall be, and are hereby, authorized to enter in any land office in the State of Louisiana, in parcels conformably to sectional divisions and subdivisions, a like quantity of public lands, after the same shall have been offered at public sale.

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